STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Campus Faculty Association, Non-Tenure Track, Local 6546, AFT/IFT/AAUP, AFL-CIO,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. 2015-CA-0006-S
	)	
Board of Trustees of the University of Illinois,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On September 5, 2014, the Campus Faculty Assaciatian, Non-Tenure Track, Local 6546, AFT/IFT/AAUP, AFL-CIO ("Unian"), filed an unfair labor practice charge with the Illinais Educatianal Labor Relatians Board ("IELRB") against the Baard af Trustees af the University of Illinois ("University") alleging that the University violated Sections 14(a)(1), 14(a)(2) and 14(a)(5) of the Illinois Educatianal Labor Relatians Act, 115 ILCS 5/1 et seq. (2012), *as amended* ("Act") by unilaterally freezing wages for bargaining unit members while granting wage increases ta some bargaining unit members, and by refusing to bargain with the Unian. The Union requested that the IELRB seek preliminary injunctive relief pursuant to Sectian 16(d) af the Act. On October 6, 2014, the Executive Director issued a Complaint and Notice af Hearing, in which he alleged that the District violated Sectians 14(a)(5) and 14(a)(1) of the Act.

The parties have set forth their pasitians on the Unian's request far injunctive relief thraugh written submissions. We have carefully considered thase pasitians. Far the reasons set forth belaw, we grant the Unian's request that the IELRB seek preliminary injunctive relief pursuant to Sectian 16(d) af the Act.[1]

I.

Section 16(d) of the Act pravides that, upon issuance of an unfair labor practice complaint, the IELRB may petition the circuit caurt for appropriate temporary relief or a restraining order. Because the Executive Director has issued a Camplaint in this case, the statutary prerequisite has been satisfied.

[1] We deny the University's motian to strike portions of the Unian's brief or, in the alternative, to pravide additional evidence. However, aur authority to seek injunctive relief pursuant to Sectian 16(d) af the Act is limited to matters on which a camplaint has issued. Therefore, we cannot seek injunctive relief based on the Union's claim that the University is refusing to bargain with the Unian.

In *University of Illinois Hospital*, 2 PERI 1138, Case Nos. 86-CA-0043-C, 86-CA-0044-C (IELRB Opinion and Order, October 21, 1986), we held that preliminary injunctive relief is appropriate where there is reasonable cause to believe that the Act may have been violated and where injunctive relief is just and proper. Thus, we examine this case to determine whether those prerequisites have been satisfied.

II.

A. Is there reasonable cause to believe that the Act may have been violated?

In order for there to be reasonable cause to believe that the Act may have been violated, there must be a significant likelihood of the Complainant prevailing on the merits. *Board of Trustees/University of Illinois at Urbana-Champaign*, 23 PERI 86, Case Nos. 2007-CA-0015-S, et al. (IELRB Opinion and Order, June 17, 2007); *Cahokia Community Unit School District No. 187*, 11 PERI 1059, Case No. 95-CA-0029-S (IELRB Opinion and Order, June 15, 1995). This first prong of the test for injunctive relief is not satisfied by the mere issuance of a Complaint. Under the Act, a Complaint is issued when questions of law or fact are presented. Although issuance of a Complaint is the statutory prerequisite for our consideration of a request for injunctive relief, something more is required to establish a significant likelihood of prevailing on the merits. *Zion-Benton Township High School District 126*, 17 PERI 1015, Case No. 2001-CA-0031-C (IELRB Opinion and Order, March 6, 2001); *Chicago Teachers Union Local No. 1, IFT/AFT, AFL-CIO*, 3 PERI 1111, Case Nos. 88-CB-0003-C through 88-CB-0023-C (IELRB Opinion and Order, September 11, 1987). In this case, we determine that there is a significant likelihood that the Union will prevail on the merits. Therefore, there is reasonable cause to believe that the Act may have been violated.

On May 14, 2014, the Union filed a petition with the IELRB seeking certification as the exclusive bargaining representative of a bargaining unit of full-time non-tenure track faculty at the University's Urbana-Champaign campus. On July 8, 2014, the IELRB certified the Union as the exclusive representative of the University's full-time non-tenure track faculty at its Urbana-Champaign campus, with the exception of the faculty at Uni High School. There are approximately 473 employees in the bargaining unit. The IELRB previously certified the Uni Faculty Organization, IEA-NEA as the exclusive bargaining representative of the faculty at Uni High School. The University has filed a petition for review of both certifications with the Appellate Court. The University also filed a motion to stay any bargaining obligations arising from the two certifications with the Appellate Court. The court denied the motion to stay.

The University states that University leadership develops a general personnel salary program for the Urbana-Champaign campus on an annual basis. The University establishes a gross percentage amount that will be available for merit increases for all University employees. Once the University has decided on a specific percentage increase, individual departments and units are responsible for implementing the wage increases for faculty members based on their relative performance and "merit".

On June 16, 2014, University President Robert Easter ("Easter") issued an email stating that the University would provide a merit-based general salary increase of 2.5%, effective with the new appointment year in August 2014. The email stated that the increase would apply to all campus and University administration employees, except for those whose wages were set through the collective bargaining process. The University posted FY 2015 budget guidelines on its website on June 24, 2014. The budget guidelines stated that faculty would normally participate in a general salary increase of 2.5%, with additional funds equaling .5% of a college's filled faculty base targeted to compression, market, equity and retention issues. The budget guidelines also stated that salary increases for employees in collective bargaining units were governed by negotiated collective bargaining agreements.

On July 14, 2014, Michael Rothberg, the Head of the Department of English at the University's Urbana-Champaign campus ("Rothberg"), sent a letter to bargaining unit member A. Kay Emmert ("Emmert") offering her a one-year appointment at a salary of $43,050. The letter did not indicate that the University would not implement the salary increase referred to in the letter due to the fact that Emmert's position was now part of a bargaining unit. According to the University, the reappointment letters that the University sent to non-tenure track faculty members stated that their 2014-2015 salaries were not yet determined, except that the reappointment letters sent to the 23 English Department non-tenure track faculty did not contain this statement.

On August 5, 2014, the University's Provost sent an email to members of the bargaining unit represented by the Union. The email stated that, because the University had to maintain the status quo regarding "wages, hours and other terms and conditions of employment" and could not implement unilateral changes without bargaining, departments could not implement academic year 2014-2015 salary increases in this bargaining unit until an agreement was bargained with the Union. As of this date, negotiations between the University and the Union had not yet begun.

On August 8, 2014, Rothberg sent Emmert a letter stating that, after sending his July 14, 2014 letter to her, he was advised that her position was among those that was included in the bargaining unit represented by the Unian. Rothberg's letter said that, due to the certification of the Union as representative af that unit, the University cauld not alter the terms or conditions of Emmert's employment, including her wages. Rathberg stated that, accordingly, the University could not implement the wage increase reflected in his July 14, 2014 letter to Emmert. Rothberg stated that, until the University and the Union were able to negatiate the wages far bargaining unit employees, Emmert's wage rate would be the salary that she was granted under the salary structure implemented on May 1, 2014, specifically $43,000.

On August 13, 2014, Emmert, who was the Union spokesperson, sent a letter to the University's spokesperson, University Director of Labar and Employee Relations Leslie Arvan ("Arvan"), stating that it was the Union's position that, as the fall 2014 raises were already established, they should go forward in order to maintain the status quo, until they were changed as a result of collective bargaining. In a letter dated August 29, 2014 concerning the University's willingness to engage in bargaining, Arvan did not respond to Emmert's statement that the fall raises should go farward. At that time, the parties had not yet begun negotiatians.

The University states that, when a union is newly certified as the representative af a bargaining unit at one af its three campuses, it declines to award a wage/salary increase until the matter is bargained with the union. The University asserts that it has applied this practice in its first contract negatiations far two faculty bargaining units represented by the Illinais Federatian af Teachers at its Chicago campus. The University states that na unian has ever previously filed an unfair labar practice charge against the University for declining to grant a wage/salary increase to newly represented employees.

It is well established that an employer vialates Sectian 14(a)(5) of the Act when it unilaterally changes mandatory subjects of bargaining. *Vienna School District No. 55 v. IELRB*, 162 Ill.App.3d 503, 515 N.E.2d 476 (4th Dist. 1987); *East Moline School District 37*, 18 PERI 1055, Case Na. 2000-CA-0068-C (IELRB Opinian and Order, February 22, 2002); *NLRB v. Katz*, 359 U.S. 736 (1962). The parties da not dispute, nar could they, that the salaries paid to the University's non-tenure track faculty are a mandatory subject of bargaining. *See Central City Education Association v. IELRB*, 149 Ill.2d 496, 599 N.E.2d 892 (1992). Nor da they dispute that the University unilaterally froze the salary increases to nan-tenure track faculty. Rather, the dispute is whether the University changed the status quo when it froze the increases.

In *Vienna*, 162 Ill.App.3d at 507, 525 N.E.2d at 479, the Appellate Court stated that, "when an employer engages in merit reviews at regular intervals with a view to granting preestablished salary increases, this is sufficient to constitute a status quo." The court found that it was reasonable for the employees to expect that they would receive salary increments during a contractual hiatus period. The court decided that the employer violated the Act by unilaterally denying employees the salary increments. Similarly, in *County of Cook (Department of Central Services)*, 15 PERI 3008 (ILLRB 1999), the Illinois Local Labor Relations Board found that the employer violated the Illinois Public Labor Relations Act by withholding wage increases which had been budgeted and scheduled prior to the union's certification.

Here, there was an established practice of granting employees merit-based increases on an annual basis. While the amount of the increase might have been determined by the University from year to year, the University had already decided the amount of the increase for the 2014-2015 academic year prior to the Union's certification. The University argues that University President Easter's email and the FY 2015 budget guidelines made clear that the decided-upon increase would not apply to employees whose wages were subject to collective bargaining. However, at the time of the announcement of the increase in President Easter's email and the FY 2015 budget guidelines, the non-tenure track faculty were not yet represented by the Union. Therefore, as to the non-tenure track faculty, the status quo was the 2.5% increase. They could reasonably expect to receive that increase. In addition, at least in the English Department, the non-tenure track faculty received reappointment letters stating what their salary increases would be without any qualification that the salary increases would not be implemented due to the fact that their positions were now represented by the Union. These letters created a reasonable expectation that those faculty members would receive their salary increases. The University could not change the status quo without collectively bargaining the matter to impasse.

The University also argues that its actions were consistent with its past practice of refraining from modifying the bargaining unit employees' wages and/or salaries without first bargaining the modification with the union. The University states that it has applied this practice in its first contract negotiations for two faculty bargaining units who were also represented by the Illinois Federation of Teachers at its Chicago campus. However, the University's actions with respect to other bargaining units, even if they were represented by the Illinois Federation of Teachers, are not controlling with respect to the unit involved in this case. In other cases, the Illinois Federation of Teachers, as well as other unions, did not challenge the

University's postponement of wage increases with respect to newly represented employees. Here, the Union objected to the University's refusal to grant the non-tenure track faculty the scheduled increase. Therefore, the University's alleged past practice does not bind the Union in this case.

We conclude that there a significant likelihood that the Union will prevail on the merits of its claim that the University violated Sections 14(a)(5) and (1) of the Act by withholding salary increases. Accordingly, there is reasonable cause to believe that Sections 14(a)(5) and (1) of the Act have been violated.

In cases of claimed retaliation for protected concerted activity, a prima facie case of a Section 14(a)(1) violation is established by demonstrating that the employees were engaged in protected concerted activity, that the employer was aware of that activity, and that the adverse action was motivated by that activity. *Neponset Community Unit School District No. 307*, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997). Here, the non-tenure track faculty engaged in protected concerted activity when they chose the Union as their exclusive collective bargaining representative. The University was clearly aware of this protected concerted activity.

In the case of Section 14(a)(3) of the Act, the IELRB has stated that specific evidence of an employer's intent to discourage union activity is not the only method by which a complainant may establish a prima facie case of a violation. *Carmi Community Unit School District 5*, 6 PERI 1020, Case No. 88-CA-0024-S (IELRB Opinion and Order, January 11, 1990). In *Carmi*, 6 PERI at IX-98, relying on *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26 (1967), the IELRB stated that "[a] complainant may satisfy its initial burden under Section 14(a)(3) by proving that the employer engaged in conduct which would predictably undermine statutory rights, particularly the right to join or refrain from supporting a labor organization." The IELRB stated that the burden then shifts to the employer to explain that its actions had a different, legitimate purpose. The IELRB stated that, in some cases, where the employer's conduct is "inherently destructive" of employee rights, the employer's proof of a legitimate purpose for its conduct may not erase the strong inference that the employer intended to discourage the employees' exercise of their statutory rights. The IELRB stated that, in other cases, employer conduct which has some harmful effect on employees' exercise of statutory rights and carries its own indicia of unlawful intent does not rise to the level of "inherently destructive" conduct. The IELRB stated that, in such cases, if the employer establishes a legitimate purpose for its conduct, the inference of unlawful intent is erased, and, unlike situations where

the employer's conduct is "inherently destructive" of employees' statutory rights, no violation of Section 14(a)(3) is possible without specific evidence of the employer's unlawful intent. A similar analysis applies under Section 14(a)(1) of the Act.

Here, after the non-tenure track faculty exercised their right under Section 3 of the Act to obtain union representation, the University denied them a previously scheduled salary increase. This conduct would predictably send a message to the employees that the choice to obtain union representation would be penalized. The implication was that the University has final control over wages in spite of the Union's certification as the employees' representative and the University's duty to bargain in good faith over wages, hours and terms and conditions of employment. The University does not offer any reason for its conduct other than the statements in the announcements of the salary increase concerning employees who were represented by unions and its assertion that it has done the same thing in other cases. The University does not address the fact that the 2.5% increase was promised prior to the Union's certification, or claim that the union objected to the withholding of wages and/or salary increase in any other case.

Accordingly, there is a significant likelihood that the Union will prevail on the merits of its claim that the University violated Section 14(a)(1) of the Act, based on a theory that the University's conduct would predictably undermine employees' exercise of their statutory rights. Therefore, there is reasonable cause to believe that Section 14(a)(1) of the Act may have been violated.

B. Is preliminary relief "just and proper?"

In determining whether preliminary injunctive relief is just and proper, the IELRB considers whether an injunction is necessary to prevent frustration of the basic remedial purposes of the Act; the degree, if any, to which the public interest is affected by a continuing violation; the need to immediately restore the status quo ante; whether ordinary IELRB remedies are inadequate; and whether irreparable harm will result without preliminary injunctive relief. *Board of Trustees/University of Illinois at Urbana-Champaign; Crete-Monee School District 201-U*, 19 PERI 145 (IELRB Opinion and Order, August 20, 2003); *Johnston City Community Unit School District 1*, 9 PERI 1048, Case No. 93-CA-0026-S (IELRB Opinion and Order, February 5, 1993). Preliminary injunctive relief should be limited to those cases in which the alleged violations are serious and extraordinary. *Board of Trustees/University of Illinois at Urbana-Champaign; Crete-Monee; Johnston City*,

Here, the situation meets these requirements. There will be irreparable harm if preliminary injunctive relief is not ordered in this matter. The Illinois Appellate Court has repeatedly held that, in the context of injunctive relief, "irreparable harm" does not mean injury that is beyond repair or compensation in damages, but rather means injury of a continuing nature. *E.g., Victor Township Drainage Dist. 1 v. Lundeen Family Farm Partnership*, 2014 IL App (2d) 140009, ___ N.E.2d ___ (Ill. App. 2nd Dist. 2014); *Hadley v. Department of Corrections*, 362 Ill.App.3d 680, 840 N.E.2d 748 (4th Dist. 2005), *aff'd*, 224 Ill.2d 365, 864 N.E.2d 162 (2007); *Lucas v. Peters*, 318 Ill.App.3d 1, 741 N.E.2d 559 (1st Dist. 2000); *Local 1894, AFSCME v. Halsapple*, 201 Ill.App.3d 1040, 559 N.E.2d 577 (4th Dist. 1990). In this case, the injury is of a continuing nature in that the University is continuing to deny the non-tenure track faculty their previously scheduled salary increases. The injury need not be very great in order to constitute irreparable harm. *Hadley*.

In addition, the Union has only recently been certified as exclusive representative of the non-tenure track faculty and is attempting to bargain its first collective bargaining agreement as the representative of those employees. The harm to this newly formed collective bargaining relationship in allowing the University to unilaterally change the employees' expectations with respect to their salaries could well be irreparable. *Cf. Johnston City Community Unit School District 1*, 9 PERI 1048, Case No. 93-CA-0026-S (IELRB Opinion and Order, February 5, 1993) (harm to bargaining relationship between employer and union which was attempting to enforce its first collective bargaining agreement "could well be irreparable"). The IELRB's remedies are not designed to correct the unquantifiable harm to the parties' bargaining relationship that is being caused by the Respondent's alleged unlawful actions. *See Board of Trustees/University of Illinois of Urbana-Champaign*.

Section 1 of the Act provides that "[i]t is the public policy of this State and the purpose of this Act to promote orderly and constructive relationships between all educational employees and their employers." Section 1 further states:

> Recognizing that harmonious relationships are required between educational employees and their employers, the General Assembly has determined that the overall policy may best be accomplished by (a) granting to educational employees the right to organize and choose freely their representatives; (b) requiring educational employers to negotiate and bargain with employee organizations representing educational employees and to enter into written agreements evidencing the result of such bargaining; and (c) establishing procedures to provide for the protection of the rights of the educational employee, the educational employer and the public.

If a preliminary injunction is not issued to restrain the University from denying the previously scheduled salary increases to its full-time non-tenure track faculty, it would allow the University to

undermine the statutory scheme that the General Assembly established for certifying unions as the exclusive representatives of educational employees and, thus, be contrary to the public interest. The University's conduct, if not restrained, could potentially erode the Union's support among bargaining unit employees by suggesting that the University will take unilateral action regardless of the Union's status as their exclusive bargaining representative, as well as create a chilling effect on other employees who might be considering seeking union representation.

We conclude that preliminary injunctive relief is just and proper under the circumstances of this matter. Because there is reasonable cause to believe that the Act may have been violated and because preliminary injunctive relief is just and proper under the circumstances of this matter, we grant the Union's request that we seek preliminary injunctive relief pursuant to Section 16(d) of the Act.

III.

In view of the foregoing conclusion that preliminary injunctive relief is appropriate under these circumstances, we authorize the IELRB's General Counsel to seek the following injunctive relief: To order the University to grant the full-time non-tenure track faculty at its Urbana-Champaign the previously scheduled 2.5% salary increase, together with the previously scheduled additional funds equaling .5% of a college's filled faculty base targeted to compression, market, equity and retention issues.

IV.

This is not a final order that may be appealed under the Administrative Review Law. *See* 5 ILCS 100/10-50(b); 115 ILCS 5/16(a).[2]

Decided: October 16, 2014
Issued: October 16, 2014
Chicago, Illinois

/s/ Ronald Ettinger
Ronald Ettinger, Member

/s/ Gilbert O'Brien
Gilbert O'Brien, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

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[2] The Board currently has four Members due to the fact that Board Member Michael Smith passed away on August 9, 2014. Pursuant to Section 5(d) of the Act, a vacancy on the Board does not impair the right of the remaining Members to exercise all of the powers of the Board.

/s/ Chairman Lynne O. Sered, dissenting

I would find that, here, the situation does not meet the requirements for preliminary injunctive relief. If the University is later found to have violated the Act, the non-tenure track faculty will be awarded backpay and interest. Thus, the IELRB's traditional remedies will be adequate to compensate the non-tenure track faculty if the University is later found to have violated the Act. *See University of Illinois (Chicago)*, 7 PERI 1117, Case No. 92-CA-0021-C (IELRB Opinion and Order, November 1, 1991); *Oregon Community Unit School District No. 220*, 6 PERI 1133, Case No. 91-CA-0004-C (IELRB Order, September 12, 1990); *University of Illinois at Chicago*, 3 PERI 1034, Case No. 86-CA-0089-C (IELRB Opinion and Order, March 10, 1987). Therefore, there will not be any irreparable harm if preliminary injunctive relief is denied. Any "chilling effect" is purely speculative. *Cf. DeKalb Community Unit School District 428*, 3 PERI 1035, Case No. 86-CA-0107-C (IELRB Opinion and Order, March 10, 1987) (preliminary injunctive relief not just and proper where "chilling effect" speculative). The effect of the withholding of salary increases until the parties reach a collective bargaining agreement is not so serious and extraordinary as to warrant injunctive relief. Accordingly, preliminary injunctive relief is not just and proper in this case.

For the above reasons, I respectfully dissent.

/s/ Lynne O. Sered
Lynne O. Sered, Chairman